

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AJZN, INC. f/k/a AERIELLE, INC.,)
)
Plaintiff,)
)
v.)
)
DONALD YU, et al.)
)
Defendants.)

Case No. 13-149-GMS

REDACTED
PUBLIC VERSION

SECOND DECLARATION OF BENJAMIN G. STEWART

I, BENJAMIN G. STEWART, declare:

1. I am a Partner at the law firm of Keating Muething & Klekamp, PLL, counsel for Defendants, and am duly admitted to practice law in the state of Ohio, and am admitted *Pro Hac Vice* in the District of Delaware in the above-captioned action.

2. I have personal knowledge of the matters set forth in this declaration, and, if called to testify, could and would competently testify about them. I submit this application in support of Defendants' Reply in Support of Summary Judgment and Defendants' Response to Plaintiff AJZN, Inc.'s Evidentiary Objections.

3. Attached hereto as **Exhibit A** is a true and accurate copy of pertinent portions of the deposition of Arthur Cohen.

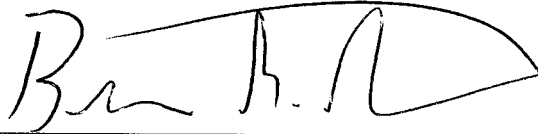
4. Attached hereto as **Exhibit B** is a true and accurate copy of pertinent portions of the deposition of Deborah J. Ford.

5. Attached hereto as **Exhibit C** is a true is a true and accurate copy of Highly Confidential portions of the deposition of Deborah J. Ford.

6. Attached hereto as **Exhibit D** is a true and accurate copy of the verification page to Defendant Aerielle IP Holdings, LLC's Answer to Plaintiff AJZN, Inc. F/K/A/ Aerielle, Inc.'s First Set of Interrogatories and Second Set of Requests for Production of Documents and Things.

7. Attached hereto as **Exhibit E** is a true and accurate copy of the verification page to Defendant Aerielle Acquisition Corporation's Answers to Plaintiff AJZN, Inc. F/K/A Aerielle, Inc.'s First Set of Interrogatories and Second Set of Requests for Production of Documents and Things.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I executed this declaration on February 11, 2016 in Cincinnati, Ohio.

A handwritten signature in black ink, appearing to read "Ben G. Stewart", written over a horizontal line.

Benjamin G. Stewart (0082638)

EXHIBIT A

1 IN THE UNITED STATES DISTRICT COURT
 2 IN AND FOR THE DISTRICT OF DELAWARE

3
 4 AJZN, INC., f/k/a AERIELLE,)
 INC.,)

5)
 Plaintiff,)

6)
 vs.) No. 13-149-GMS

7)
 DONALD YU; AERIELLE, LLC;)

8 GREAT AMERICAN LIFE INSURANCE)

 COMPANY; AERIELLE)

9 TECHNOLOGIES, INC.; AERIELLE)

 ACQUISITIONS CORPORATION,)

10 AERIELLE IP HOLDINGS, LLC;)

 and DOES 1 through 10,)

11 inclusive,)

12)
 Defendants.)

13
 14
 15
 16 Oral Deposition of ARTHUR COHEN,
 17 pages 1 through 271, taken on behalf
 18 of Defendants, at 1900 Camden Avenue,
 19 Suite 101, San Jose, California,
 20 beginning at 9:15 a.m. and ending at
 21 5:35 p.m. on Thursday, September 10,
 22 2015, before Noelia Espinola,
 23 California Certified Shorthand
 24 Reporter No. 8060.
 25

1 lunch. It's going to go faster.

2 A Okay. Are we finished with this document?

3 Q Yes, for now. Sorry. Thank you.

4 A Okay.

5 MR. STEWART: Can you mark this as Exhibit 5,
6 please.

7 (Defendants' Exhibit 5 was marked
8 for identification and is attached
9 hereto.)

10 (Discussion off the record.)

11 BY MR. STEWART:

12 Q Mr. Cohen, I've handed you what has been
13 marked as Exhibit 5.

14 For the record, it's a document entitled
15 "Security Agreement," and it has the production
16 numbers 01298 through 1315.

17 Can you turn to page 1311?

18 A Yes.

19 Q Does your signature appear twice on the page
20 with the production number GA 1311?

21 A Yes, that appears to be my signature.

22 Q Did you, in fact, sign this document on
23 behalf of Aerielle, Inc., and Aerielle Technologies,
24 Inc.?

25 A That's what the document says. My

1 signatures are on those, yes.

2 MR. STEWART: Can we mark this as Exhibit 6.

3 (Defendants' Exhibit 6 was marked
4 for identification and is attached
5 hereto.)

6 BY MR. STEWART:

7 Q Mr. Cohen, I've handed you what has been
8 marked as Exhibit 6. Can you turn to page GA 1326?

9 For the record, this is a document with the
10 production numbers GA 1316 through GA 1329. It's
11 titled "Stock Pledge Agreement."

12 Mr. Cohen, does your signature, in fact,
13 appear on GA 1326?

14 A That appears to be my signature on this
15 stock pledge document, which appears to be that.

16 Q Did you, in fact, sign this document on
17 behalf of Aerielle, Inc.?

18 A It appears that I signed this document, yes.

19 Q A --

20 As we're seeing, the parties executed a
21 series of documents on or around September 17, 2007,
22 correct?

23 A Correct.

24 Q You mentioned earlier that you were --

25 And in this case "you" I mean plaintiff.

1 -- advised by Fenwick & West during the
2 course of this transaction; is that correct?

3 A They were our attorneys.

4 Q And would they have reviewed all the
5 documents that you signed before you signed them?

6 A Correct. I'd like to add to that, however.

7 Q Go ahead.

8 A I mean, you know, I can't -- I can't recall
9 that they -- this date in time, I don't know
10 100 percent what they reviewed and what they didn't
11 review. But they were our attorneys, and that -- and
12 they were supposed to have reviewed all of these
13 documents. That's what I can say today, you know,
14 talking about something that was six or seven years
15 ago. I just want to be clear about that.

16 Q And to the extent you had a question or
17 didn't understand something in any of the documents
18 that were signed in connection with that transaction,
19 you could have asked Fenwick & West about it,
20 correct?

21 A At that time I could have asked them.

22 MR. STEWART: I'd like to mark this as
23 Exhibit 7

24 (Defendants' Exhibit 7 was marked
25 for identification and is attached

1 12,000 units in Aerielle, LLC. Is that correct?

2 A That's what it says.

3 Q Below that it says that Donald Yu will
4 receive a certificate for 20,000 warrants in
5 Aerielle, LLC, doesn't it?

6 A That's what it says.

7 Q So isn't it the case that if warrants in
8 Aerielle, LLC, turned out to be worthless, Donald Yu
9 had more to lose than Aerielle, Inc., had to lose?

10 A You're asking me to make some kind of
11 calculations on motive. And I don't know -- I don't
12 know all of Donald Yu's motives and/or why he did
13 what he did.

14 Q So you can't speculate, sitting here today,
15 what Donald Yu was thinking when he agreed to -- when
16 he agreed to take a warrant for 20,000 shares in
17 Aerielle, LLC?

18 A What I -- what I don't have to speculate on
19 is based off of discovery through a deposition of
20 Reba Gong, which showed that he, through direction of
21 GALIC, tried to make the warrant that Aerielle, Inc.,
22 had worthless. And he asked Reba Gong to do things
23 to the books to make the warrant worthless. At least
24 that's what she, under oath, in a deposition, stated.

25 Q What --

1 A Why Donald Yu decided to do that -- she said
2 that Donald Yu was -- told her that that's what GALIC
3 told him to do.

4 And there are many other -- you know, there
5 are many other activities that happened that
6 demonstrate that Tom Keitel and Joe Stelzer -- you
7 know, they're telling me that the warrant was
8 worthless in 200- -- was it October of 2010?

9 Meanwhile, based on documents that I just
10 read two days ago, in fact, internal documents, show
11 that they felt the company was worth as much as
12 \$60 million. Yet they sat down with my wife and I in
13 a restaurant -- Joe Stelzer, Tom Keitel -- and said
14 to us, The warrant's worthless. Take this earnout
15 agreement instead. That was their story.

16 Q Well, let's unpack that litany of
17 allegations.

18 First of all, you're referring to the
19 testimony of Reba Gong.

20 A Deposition.

21 Q Deposition testimony of Reba Gong.

22 And you mentioned that she said that Donald
23 Yu told her to take steps to make the warrant
24 worthless, correct? That was your understanding of
25 Reba Gong's testimony, correct?

1 A That's correct.

2 Q And I believe, if I recall her testimony,
3 both from being there and from reviewing her
4 transcript, she mentioned that she had prepared a
5 spreadsheet that would make the -- she was asked to
6 prepare a spreadsheet that would wipe out the
7 interest of the warrant holders. Is that consistent
8 with your understanding of what her testimony was?

9 A I don't recall.

10 Q You just recall that she said something
11 about making the warrant worthless?

12 A That's correct, yes.

13 Q What did she do --

14 Or what did Donald do to make the warrant
15 worthless?

16 A She just told me that that was his intent
17 and told -- you know. You know, it was a discussion
18 that they had.

19 Q But can you tell me your understanding of
20 what she actually did or what he actually did to make
21 the warrant worthless?

22 A She didn't do anything is the point. She
23 didn't do anything to make the warrant worthless.
24 But she was given instructions about the intent to do
25 it.

1 Q So she was given instructions to make the
2 warrant worthless, which it's your recollection she
3 didn't follow? Am I understanding that --

4 A That's correct. And, according to her, they
5 fired her for it.

6 Q And what was she told to do that would make
7 the warrant worthless?

8 A I don't know.

9 Q I recall her testimony being that she was
10 asked to prepare a spreadsheet that would make the
11 warrant worthless.

12 A Again, I don't know. You're asking me a
13 question, so --

14 Q Do you have an understanding, sitting here
15 today, as to how a spreadsheet prepared by Reba Gong
16 could have made the warrant worthless?

17 A I don't know. All I'm expressing to you is
18 that Donald Yu expressed his intent to do that. I
19 cannot get -- you know, you can ask Donald Yu what
20 his intent was when he spoke to Reba Gong to do that.

21 Q Your contention in the complaint was that
22 the warrant was illusory and worthless when it was
23 issued, correct?

24 A Can we go back to the complaint, exactly how
25 it's worded?

1 Q Sure. It's Exhibit 2. I'm looking at
2 paragraph 18.

3 A Oh, sorry.

4 Q And I'm looking, just for example, in the
5 second sentence of paragraph 18. You referred to
6 "the illusory Warrant."

7 A Yes.

8 Do you have a question?

9 Q I mean, is it -- I'm just making sure I
10 understand the contention.

11 Is it your contention that when the warrant
12 was issued, the defendants who existed at the time
13 knew that the warrant was worthless? Is that --

14 A That is a contention. By their subsequent
15 actions, they prevented me from -- they also
16 prevented me from exercising the warrant. I
17 attempted to exercise the warrant. I was in a board
18 meeting. And I asked the attorney of Aerielle, LLC,
19 I'm a board observer. I would like to exercise the
20 warrant.

21 And he said great, send me an E-mail, and
22 I'll get you the warrant -- because I did not have
23 the original warrant -- and he said, I'll take care
24 of it.

25 I didn't hear from him for a little while,

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AJZN, INC. f/k/a AERIELLE, INC.,)
)
Plaintiff,)
)
vs.) Case No.
) 13-cv-00149-MPT
DONALD YU; AERIELLE, LLC; GREAT)
AMERICAN LIFE INSURANCE COMPANY;)
AERIELLE TECHNOLOGIES, INC.;)
AERIELLE ACQUISITIONS CORPORATION;))
AERIELLE IP HOLDINGS, LLC; and)
DOES 1 through 10, inclusive,)
)
Defendants.)
)

DEPOSITION OF DEBORAH J. FORD, CPA
Costa Mesa, California
Friday, December 11, 2015

Reported by:
TRISHA WIENER
CA CSR No. 13576
JOB No. 305614

1 Q And what is your new address?

2 A 2415 Campus Drive, Suite 225. It's in
3 Irvine, California. I think it's 92612. It's on my
4 business card, if you'd like a copy.

10:08 5 Q Thank you.

6 So as of October 15, 2015, the date of this
7 report, the CV was accurate?

8 A Yes.

9 Q And outside of that change in the address,
10:08 10 is there anything else on this CV that's changed
11 since the date of this report, October 15, 2015?

12 A No.

13 Q This report identifies you on the bottom,
14 second-to-last section, as a certified public
10:09 15 accountant; is that correct?

16 A That's correct.

17 Q And is that often referred to as a CPA?

18 A Yes.

19 Q Can you explain for the record and for the
10:09 20 Court what a CPA is?

21 A It stands for certified public accountant.
22 It's a designated license from the State of
23 California. In order to obtain it, you have to meet
24 certain educational requirements, take four --
10:09 25 I believe they're four-hour tests but the rules may

1 have changed since I took it, and meet some
2 experience requirements.

3 Q And in California -- strike that.

4 Go ahead.

10:09 5 A We also have to do continuing education to
6 maintain our license.

7 Q That was going to be my question.

8 A It's 80 hours for every two years. It
9 requires an ethics component and it has to be -- and
10:09 10 a certain component has to be technical skills.

11 Q And the CV indicates you've been a CPA since
12 2000; is that correct?

13 A That's correct.

14 Q There's no gap since 2000?

10:10 15 A Nope.

16 Q What is your current position at Hagen,
17 Streiff, Newton & Oshiro, Accountants, PC?

18 A I'm a manager.

19 Q Was that your position when you prepared
10:10 20 this report?

21 A Yes.

22 Q It says in your CV that your primary focus
23 is working with attorneys and others in providing
24 litigation support services and forensic accounting.

10:10 25 Can you explain to me what you mean by that?

1 A So most of my job is measuring damages in
2 litigation scenarios, whether that is damages
3 sustained to a business or a person, like a lost
4 wages calculation, but we measure the damages related
10:10 5 to litigation.

6 Q And did you do that in this case?

7 A Yes -- no, I did not. I didn't measure
8 damages.

9 Q How much of your work is devoted to
10:11 10 litigation?

11 A About half.

12 Q What's the other half devoted to?

13 A Insurance.

14 Q And can you just briefly explain what you do
10:11 15 in the insurance field?

16 A We're hired by insurance companies to
17 measure damages that's covered by insurance policies.
18 Sometimes they're very big losses, sometimes they're
19 small losses. It covers all sorts of different types
10:11 20 of businesses.

21 Q Do you often provide expert testimony?

22 A Define "often."

23 Q Okay. The CV lists three cases where you
24 gave expert testimony. What time period does that
10:11 25 cover -- strike that.

1 Are those the only three cases you've ever
2 given expert testimony in?

3 A Yes.

4 Q So I noticed sometimes, I think there's a
10:11 5 rule that says experts must disclose the last
6 four years -- I may be misquoting it -- of expert
7 testimony.

8 Just to be clear, in this case you're
9 disclosing all the expert testimony you've ever done;
10:12 10 is that correct?

11 A Yes.

12 Q This lists three matters where you've given
13 expert testimony, correct?

14 A Yes.

10:12 15 Q And these matters were in 2014, 2015,
16 correct?

17 A Yes.

18 Q Can you estimate what percentage of your
19 work in 2014, 2015 these matters represented?

10:12 20 A A small percentage. I have issued other
21 reports that I'm the expert in, but I haven't given
22 depositions or trials on them.

23 Q Has your opinion ever been fully or
24 partially excluded by a court or arbitration panel?

10:12 25 A No.

1 Q Has your opinion or testimony ever been the
2 subject to a motion to exclude it from a trial or
3 arbitration proceeding?

4 A Not that I know of.

10:13 5 Q So as far as you know, your testimony has
6 never been the subject of what we call a Daubert
7 motion?

8 A Never.

9 Q Are you aware of any requests by a party in
10:13 10 litigation or arbitration to limit the scope or
11 breadth of any potential testimony that you would
12 give?

13 A Not that I'm aware of.

14 Q We talked a little bit about this, but it
10:13 15 says here that you conduct fraud examinations; is
16 that correct?

17 A Yes. I haven't done any recently, but I do
18 find fraud fascinating.

19 Q As do we all.

10:13 20 What types of fraud do you examine?

21 A So usually it's been employee theft and
22 fraud, whether it's a controller that's been accused
23 of embezzling money or an employee that's been
24 accessing funds that they shouldn't have access to.

10:14 25 Q And when you do what you call "fraud

1 examination," are you typically attempting to
2 determine whether or not fraud occurred?

3 A The definition of "fraud" gets a little
4 sticky, but we investigate and measure -- so we break
10:14 5 down what happened and where the money went and the
6 dollar amounts associated with it.

7 Q And were you asked to do that in this case?

8 A No.

9 Q You mentioned this and it's also mentioned
10:14 10 on your CV. You do work tracing employee theft?

11 A Yes.

12 Q Would you consider that related to your work
13 in fraud examinations?

14 A Yes.

10:14 15 Q I saw that you've given presentations on
16 employee theft; is that right?

17 A I did.

18 Q Is this a major part of your practice?

19 A No, I just find it fascinating.

10:14 20 Q When you analyze employee theft, does that
21 sometimes involve employees submitting improper,
22 excessive expense reports?

23 A Yes.

24 Q And as an expert in employee theft, do you
10:15 25 sometimes quantify damages associated with employees

1 submitting excessive expense reports?

2 A Yes.

3 Q Did you do that in this case?

4 A I did not.

10:15 5 Q Were you asked to do that in this case?

6 A No.

7 Q Have you ever analyzed damages stemming from
8 an alleged breach of fiduciary duty?

9 A Probably.

10:15 10 Q Does that mean that sitting here today, you
11 can't recall any specific times where you were asked
12 to analyze damages stemming from an alleged breach of
13 fiduciary duty?

14 A When I'm hired, I measure the damages. The
10:15 15 sort of what caused it or the reasons behind it,
16 I don't always recall. I focus on the measurement of
17 damages, what happened, not the terminology behind
18 it. So I've measured damages.

19 Q So you think you've measured damages
10:15 20 stemming from an alleged breach of fiduciary duty?

21 A I can't recall one right now.

22 Q Do you think you would be qualified to
23 measure damages from an alleged breach of fiduciary
24 duty?

10:16 25 A Depending what the damages were, yes.

1 Q Were you asked to analyze any damages
2 stemming from an alleged breach of fiduciary duty in
3 this case?

4 A No.

10:16 5 Q I believe you testified you weren't asked to
6 measure any damages in this case, correct?

7 A Correct.

8 Q There's a reference on here to something
9 called "contingent business interruption."

10:16 10 Do you see that?

11 A Yes.

12 Q What is that?

13 A It's a specific type of insurance claim
14 where maybe my facility wasn't damaged, but my
10:16 15 supplier's facility was damaged so that I wasn't able
16 to continue my sales, continue my operations because
17 of someone else's issues. So my loss is contingent
18 on someone else's loss.

19 Q Have you ever been asked to analyze a case
10:16 20 involving tortious interference with contract?

21 A No.

22 Q Excluding this case.

23 I'm going to ask you about valuing
24 intellectual property, but I just want to be clear
10:17 25 for the record that I'm going to ask about your

1 experience before this case, but I want to be clear
2 for the record that by asking you about your
3 experience about valuing intellectual property before
4 this case, I'm not conceding that you actually did
10:17 5 value intellectual property in this case, just to be
6 clear for the record.

7 So having said that, putting aside the
8 current case and subject to that disclaimer, have you
9 ever been asked to opine on the value of intellectual
10:17 10 property?

11 A In the case of United Housing Services, UHS,
12 there was intellectual property involved, but it was
13 customer lists. So one party was alleging that the
14 other party stole their customer lists, and
10:17 15 I measured the damages associated with those
16 particular customers. So I took how much those
17 customers were worth in revenue, the costs associated
18 with fulfilling that revenue service. So I measured
19 how much income those customers were worth to the
10:18 20 party, but that was -- that's considered intellectual
21 property.

22 Q And again, just to be clear for the record,
23 you're referring to the case listed on your CV,
24 United Housing Service versus Aklero Risk Analytics,
10:18 25 et al.?

1 A Yes.

2 Q Are there any other cases, putting aside
3 that case and putting aside the current case and
4 subject to my disclaimer from before, where you've
10:18 5 been asked to measure the value of intellectual
6 property?

7 A No.

8 Q So focusing on the United Housing Service
9 case, the intellectual property that was at issue in
10:18 10 that case were customer lists; is that correct?

11 A Correct.

12 Q Were there any patents at issue in that
13 case?

14 A No.

10:18 15 Q Have you ever been asked to opine on the
16 value of patents, excluding this litigation?

17 A No.

18 Q So prior to October 15th, how many patent
19 valuations had you performed?

10:19 20 A Zero.

21 Q Prior to October 2015, had you ever been
22 asked to review or analyze a valuation of
23 intellectual property that was prepared by another
24 person?

10:19 25 A No.

1 Q Have you ever been asked to review a patent
2 valuation prior to this case?

3 A No.

4 Q Have you ever offered an opinion as to the
10:19 5 adequacy of a patent valuation performed by another
6 party?

7 A No.

8 Q Have you ever testified concerning the value
9 of intellectual property?

10:19 10 A Excluding the one we've already discussed?

11 Q No, including that.

12 You did testify in that case?

13 A I did testify in that case.

14 Q And again, just so the record's clear, you
10:19 15 did testify about the value of the customer lists in
16 the United Housing Service case, correct?

17 A Yes.

18 Q Excluding that case, excluding today,
19 subject to my disclaimer, have you ever been asked to
10:19 20 testify concerning the value of intellectual
21 property?

22 A No.

23 Q Have you ever been asked to testify
24 concerning the value of patents?

10:20 25 A No.

1 Q Have you written any papers concerning
2 methods used to value intellectual property?

3 A No.

4 Q Have you written any papers concerning
10:20 5 methods used to value patents?

6 A No.

7 Q Have you received any training on how to
8 value patents?

9 A No.

10:20 10 Q Have you received any training on how to
11 value intellectual property?

12 A Yes.

13 Q What training have you received?

14 A The AICPA has a credential called the ABV,
10:20 15 and I'm in the process of getting that license.
16 That's a business valuation license, but part of that
17 is intellectual property. So I have received some
18 training in the valuation of intellectual property.

19 Q But that training did not include training
10:20 20 on valuing patents; is that correct?

21 A Correct.

22 Q And just so I'm clear for the record, what
23 is the AICPA?

24 A American Institute of Certified Public
10:20 25 Accountants.

1 Q You're trying to get an ABV accreditation?

2 A I'm in the process of getting my ABV.

3 Q What does ABV stand for?

4 A Accredited in Business Valuation.

10:21 5 Q But you don't have that credential yet,
6 correct?

7 A Correct.

8 Q So currently do you have any certifications
9 specifically related to valuing intellectual
10:21 10 property?

11 A No.

12 Q Do you have any certifications specifically
13 related to valuing patents?

14 A No.

10:21 15 Q Excluding your work on this case or your
16 preparation for your work on this case, have you read
17 any papers, books, or articles concerning how to
18 value patents?

19 A No.

10:21 20 Q Have you read any books, articles, papers
21 concerning different methods for valuing patents?

22 A No.

23 Q In preparation for this case, did you read
24 any books, articles, or papers concerning the
10:21 25 valuation of patents?

1 A No.

2 Q Prior to this deposition, did you review the
3 report prepared by Mike Pellegrino in this case?

4 A What was the first part of the question?

10:22 5 Q Prior to this deposition, did you review the
6 report prepared by Mike Pellegrino in this case?

7 A Yes.

8 Q And to be clear, you didn't review that
9 report obviously before preparing your report?

10:22 10 A Yes.

11 Q Did you read the discussion concerning IP
12 valuation in his report?

13 A Yes.

14 Q Did you read any of the books, articles, or
10:22 15 papers cited in his report?

16 A No.

17 Q And just to be clear for the record,
18 I'm referring to the published books and papers that
19 he referred to in his report.

10:22 20 You did not read any of those?

21 A I didn't read those. Regarding patents,
22 I didn't read those.

23 Q So we talked about your work in United
24 Housing Service. We talked about the certification
10:22 25 that you're getting.

1 Outside of those two things, is there any
2 other professional experience related to valuing
3 intellectual property that we haven't discussed
4 today?

10:22 5 A I've assisted some of the partners in my
6 firm in valuing intellectual property.

7 Q Have you assisted any of the partners in
8 your firm in valuing patents?

9 A There was a medical patent, yes.

10:23 10 Q Can you tell me the --

11 A I think we were measuring the royalty rates.

12 Q Can you tell me the name of the partner you
13 were working with on that case?

14 A Chris Money.

10:23 15 Q When was that?

16 A This year, in 2015.

17 Q What was your role in that engagement?

18 A Analysis of the documents, calculation of
19 royalty rates.

10:23 20 Q In connection --

21 Can you tell me the name of the --

22 A I can't recall it right now. I know it was
23 a hernia patent. I think it started with an A.

24 MS. DONAHUE: Amato, that case?

10:24 25 THE WITNESS: Yeah, Amato.

1 BY MR. STEWART:

2 Q That's the name of the company?

3 A I'm not sure if it was the company or the
4 individual, but we called it "Amato."

10:24 5 Q Was that your client?

6 A Not mine.

7 Q Was that your firm's client?

8 A I don't know if Amato was, again, the firm's
9 name or the party's name. I don't recall.

10:24 10 MS. DONAHUE: It was a party. I can get you
11 that information.

12 MR. STEWART: Thank you.

13 Q And am I to assume that this matter involved
14 work with Ms. Donahue's law firm?

10:24 15 A It appears to be. I don't recall.

16 Q How long did you spend on that matter?

17 A I don't recall. 40 hours?

18 Q Of those 40 hours, how much was devoted to
19 valuing a patent?

10:24 20 A Again, we didn't value the patent. We
21 measured the royalty.

22 Q So in that case you weren't actually
23 attempting to value a patent?

24 A No.

10:25 25 Q Are there any other cases or matters that

1 you've worked on that in any way involved analyzing
2 patents?

3 A Patents, no.

4 Q And I take it from your previous answer,
10:25 5 there are other matters that you've assisted on that
6 involved in some way analyzing intellectual property
7 other than patents, correct?

8 A Correct.

9 Q How many matters?

10:25 10 A That's difficult to say because intellectual
11 property covers so many things.

12 Q Is it fair to say many matters have in some
13 way touched on intellectual property other than
14 patents?

10:25 15 A Yes.

16 Q But sitting here today, the only matter that
17 you can recall that involved a patent was the matter
18 you worked on with Chris Money for about 40 hours
19 this year, correct?

10:25 20 A Yes.

21 MR. STEWART: Can we mark the notice as
22 Exhibit 2?

23 THE REPORTER: Yes.

24 (Defendants' Exhibit 2 was marked
10:26 25 for identification and is attached

1 hereto.)

2 BY MR. STEWART:

3 Q Ms. Ford, I've handed you what's been marked
4 as Exhibit 2. It's a subpoena to testify in a civil
10:26 5 action. It has an exhibit.

6 Have you seen this document before?

7 A Yes.

8 Q Are you here today pursuant to this
9 subpoena?

10:26 10 A Yes.

11 Q The subpoena asked you to bring documents
12 today; is that correct?

13 A Yes.

14 Q And did you bring the documents that were
10:26 15 requested by the subpoena today?

16 A Yes.

17 Q And your counsel was nice enough to hand me
18 a stack of documents before the deposition, and we'll
19 talk about those specific documents later, but it
10:27 20 appears to me that these are documents that you
21 reviewed in connection with this engagement?

22 A Yes.

23 Q In other words, these are documents
24 generated or maintained by some of the parties in
10:27 25 this litigation that you reviewed, correct?

1 compensation for work on this matter?

2 A No. I don't believe we even collected a
3 retainer.

4 Q I want to talk about the scope of what you
10:40 5 were asked to do in this case.

6 Let's start on page 3 of your report.

7 A Okay.

8 Q Section B of page 3 of your report says,
9 "Assignment." And it says, "I was retained by
10:40 10 O'Neil LLP, attorneys for AJZN, Inc., the Plaintiff,
11 to determine the amount of assets in excess of
12 liabilities that were purchased under the Asset
13 Purchase Agreement."

14 Did I read that correctly?

10:40 15 A I believe so.

16 Q Does that accurately reflect your
17 understanding of what you were assigned to do in this
18 case?

19 A Yes.

10:41 20 Q And we'll talk about the substance of your
21 opinion later, but you offer an opinion as to the
22 amount of assets less the assumed liabilities that
23 were purchased, correct?

24 A Yes.

10:41 25 Q And the asset purchase agreement we're

1 referring to here, just to be clear, is the asset
2 purchase agreement dated April 10, 2009, correct?

3 A Correct.

4 Q Did you, in fact, attempt to determine the
10:41 5 amount of assets that were transferred pursuant to
6 the asset purchase agreement?

7 A Yes.

8 Q And did that require you to opine on the
9 value of those assets?

10:41 10 A No.

11 Q Can you explain -- can you explain why you
12 would say no to that?

13 A I took the assets as they were written on
14 the balance sheets as the values that were taken by
10:41 15 the parties and contemplated in that purchase
16 agreement. I didn't independently value receivables.
17 I didn't independently value any of their assets,
18 like fixed assets or office equipment. I didn't go
19 back and value inventories. I took the book value as
10:41 20 recorded.

21 Q Can you explain to me your understanding of
22 what "amount of assets" means in this context?

23 A The "amount of assets"?

24 Q Yes.

10:42 25 A Is the assets that were --

1 The book value of -- no.

2 The assets that were on the books and
3 contemplated in the agreement. I didn't go back and
4 value. I just took the dollar amount associated with
10:42 5 them. There's a slight difference in terminology.

6 Q So in your view and your opinion, you did
7 not perform a valuation in this case?

8 A Correct.

9 Q So you were not attempting to determine the
10:42 10 value of the assets that were transferred pursuant to
11 the April 10, 2009 asset purchase agreement; is that
12 correct?

13 A I did not value the fair market value.
14 I took the amount that the parties believed the
10:42 15 assets were worth at the time. So it could be the
16 value to them, but I didn't perform a valuation.

17 Q So your assignment in this case, as you
18 understood it, was to determine what the parties
19 believed the assets were worth as of April 10, 2009?

10:43 20 A Based on the documents that I could find.
21 Obviously I can't read their minds, so I took the
22 documents and the information provided at that time,
23 what were they worth to them.

24 Q And you were not asked to perform a damages
10:43 25 calculation; is that correct?

1 A Correct.

2 Q Are you familiar with methodologies that are
3 used to calculate damages?

4 A Yes.

10:43 5 Q Are you familiar with methodologies that
6 could be used to calculate damages in this case?

7 A Depends on what he's alleging, but usually
8 in your damages calculation you calculate what would
9 have happened but for the alleged action and what
10:43 10 actually happened and measure the difference.

11 Q And you were not asked to do that in this
12 case?

13 A I was not asked to do that.

14 Q Would you be qualified to calculate the
10:44 15 damages in this case if asked to do so?

16 A Depending on the assumptions and the
17 circumstances, yes.

18 Q And sitting here today, you don't know what
19 the assumptions and circumstances are?

10:44 20 A Correct.

21 Q I'll represent to you, you may already be
22 aware of this, there's several claims pending in this
23 lawsuit that have been brought by plaintiff.

24 Were you asked to opine on which of those
10:44 25 claims the number that you came up with in this

1 report relate to?

2 A No.

3 Q Were you asked to tie the amount of assets
4 that you referred to to any particular claim in this
10:44 5 case?

6 A No.

7 Q Sitting here today, do you have any opinion
8 as to whether any party in this case should be
9 compensated based on what you call the "amount of
10:44 10 assets" that were transferred pursuant to the
11 April 10, 2009 asset purchase agreement?

12 A Wouldn't that be a legal conclusion?

13 I just measured them. I don't have an
14 opinion as to who should pay what.

10:45 15 Q Do you have any opinion at all as to whether
16 any party is entitled to damages in this case?

17 A No.

18 Q Did you bring to bear any specifically
19 identifiable damages methodology in preparing your
10:45 20 report or formulating your opinions in this case?

21 A No.

22 Q Are you familiar with a warrant to purchase
23 12,000 units of Aerielle, LLC dated April 10, 2009
24 that was issued to the plaintiff in this case?

10:45 25 A I'm aware of one existing, yes.

1 Q Were you asked to determine the value of
2 that warrant?

3 A No.

4 Q And will you offer any opinion in this case
10:45 5 as to the value of that warrant?

6 A No.

7 Q Are you aware of an asset purchase agreement
8 dated December 31, 2010 between Aerielle, LLC and
9 Aerielle Acquisitions Corp.?

10:46 10 A No.

11 Q Were you asked to determine the amount of
12 assets as of -- strike that.

13 Were you asked to determine the amount of
14 assets that were transferred on December 31, 2010?

10:46 15 A No.

16 Q Do you have any opinion in this case as to
17 the amount of assets that were purchased in a
18 December 31, 2010 transaction between Aerielle, LLC
19 and Aerielle Acquisitions Corp.?

10:46 20 A No.

21 Q Did you attempt to determine the amount of
22 assets in excess of liabilities that were purchased
23 under a December 31, 2010 asset purchase agreement
24 between Aerielle, LLC and Aerielle Acquisitions
10:46 25 Corp.?

1 A No.

2 Q Did you conduct any analysis at all related
3 to the December 31, 2010 asset purchase agreement
4 between Aerielle, LLC and Aerielle Acquisitions
10:46 5 Corp.?

6 A No.

7 Q Did you make any attempt to value any assets
8 in this case as of December 31, 2010?

9 A No.

10:46 10 Q And will you offer any opinion concerning
11 the value of any assets as of December 31, 2010?

12 A No.

13 Q Were you asked to determine the amount of
14 assets that were purchased pursuant to a sale by
10:47 15 public auction that occurred on August 2, 2011?

16 A No.

17 Q Are you familiar or aware of a secured party
18 sale that took place on August 2, 2011 in which
19 Great American Life Insurance Company purchased the
10:47 20 assets of Aerielle Acquisitions Corp. and Aerielle
21 Technologies, Inc.?

22 A Yes.

23 Q And have you reviewed any documents
24 reflecting or related to that transaction?

10:47 25 A The only document I was provided was a

1 letter from Great American saying that they did that.
2 I don't know any more details on it.

3 Q Did you do any analysis concerning the
4 amount of assets that were purchased in that
10:48 5 transaction?

6 A No.

7 Q Did you attempt to determine the amount of
8 assets in excess of liabilities that were sold on
9 August 2, 2011?

10:48 10 A No.

11 Q Did you conduct any analysis as to the value
12 of the assets that were purchased by public sale on
13 August 2, 2011?

14 A No.

10:48 15 Q Were you asked to determine the value of any
16 assets as of August 2, 2011?

17 A No.

18 Q And will you, in fact, offer any opinion
19 concerning the value of any assets as of August 2,
10:48 20 2011?

21 A No.

22 Q Were you asked to analyze whether the public
23 asset sale that occurred on August 2, 2011 complied
24 with the terms of the Uniform Commercial Code or
10:48 25 other applicable law?

1 A No.

2 Q Are you prepared to offer any opinion on
3 that topic?

4 A No.

10:48 5 Q Did you conduct any analysis in this case at
6 all concerning the value of any assets as of any date
7 in 2010?

8 A No.

9 Q Did you conduct any analysis in this case at
10:48 10 all concerning the value of any assets as of any date
11 in 2011?

12 A No.

13 Q Were you asked to determine the current
14 value of any assets at issue in this case?

10:49 15 A No.

16 Q Do you intend to offer any opinions about
17 the current value of any assets at issue in this
18 case?

19 A No.

10:49 20 Q Were you ever asked to opine whether any
21 party in this case was solvent or insolvent at any
22 specific time?

23 A No.

24 Q Were you asked to analyze whether any party
10:49 25 in this case was ever on the brink of insolvency at

1 any time?

2 A No.

3 Q I think we touched on this earlier, but you
4 were not asked to analyze any issues relating to
10:49 5 employee theft in this case; is that correct?

6 A Correct.

7 Q Can you turn to page 5 of your report?

8 A Yes.

9 Q Page 5 and 6 here contain a section called
10:50 10 "Information Considered."

11 And this is a list of documents, correct?

12 A Correct.

13 Q Are these all of the documents that you
14 reviewed when you prepared this report?

10:50 15 A Yes.

16 Q You didn't review any other documents, just
17 to be clear for the record?

18 A I was provided other documents that I didn't
19 deem relevant, so I didn't review them and didn't
10:50 20 rely on them. For instance, the legal documents
21 requesting documents from one side to another,
22 I didn't review them.

23 Q So you were provided documents that you
24 reviewed and then didn't deem relevant or that you
10:50 25 deemed irrelevant before you reviewed them?

1 A They are supplemental requests for
2 documents, I forget the legal term for them, like
3 form interrogatories. If there was no documents
4 attached, I didn't rely on them. I didn't even look
10:50 5 at them. I only looked for documents.

6 Q Did you review any interrogatory responses
7 in this case?

8 A No.

9 Q So outside of the documents listed here, you
10:50 10 also reviewed, it sounds like requests for documents?

11 A Uh-huh.

12 Q Are there any other documents outside the
13 requests for documents and the documents listed here
14 that you reviewed before preparing your report in
10:51 15 this case?

16 A I think there's one document that we had
17 from the accountant, but I didn't rely on it in my
18 report.

19 Q You said one document you got from the
10:51 20 accountant?

21 A Reba.

22 Q Gong?

23 A Gong.

24 Q So just so I'm clear, in addition to the
10:51 25 documents listed here and in addition to the document

1 requests, you also receive a document from Reba Gong?

2 A Yes, but I did not rely on it in my report
3 or didn't utilize it in my report.

4 Q Did you receive that document before you
10:51 5 prepared the report?

6 A Yeah.

7 Q Did she send that document directly to you?

8 A No.

9 Q Who did you receive that document from?

10:51 10 A The attorneys.

11 Q Was this a document that was prepared
12 recently specifically for you, or was this an older
13 document that was prepared while Ms. Gong worked at
14 Aerielle?

10:52 15 A No. I believe I asked her a question about,
16 for instance, the inventories, if there was any
17 obsolete issues back in April of 2009.

18 Q Okay. Let's just back up for a second. We
19 were talking about documents and now we're moving
10:52 20 into conversations that you had.

21 Let's focus on documents just for a second.
22 So you listed the documents here that you reviewed.
23 You also looked at some document requests. You
24 reviewed a communication from Reba Gong.

10:52 25 A Uh-huh.

1 Q Is there anything else that you considered
2 or reviewed before you drafted or prepared your
3 report in this case?

4 A Not that I can recall.

10:52 5 Q So --

6 I thought you were checking your watch.

7 A No. I'm looking at my footnotes to make
8 sure I didn't miss something.

9 Q Understood.

10:52 10 You mentioned that you had, I guess, talked
11 to Reba Gong while you were preparing this report?

12 A Yes.

13 Q How many conversations did you have with her
14 before preparing this report?

10:53 15 A One.

16 Q Approximately how long before the report was
17 served was that conversation?

18 A It was fairly recent before the report.
19 I don't recall.

10:53 20 Q How long was that conversation?

21 A It was pretty short.

22 Q Less than a half hour?

23 A Certainly.

24 Q Did you receive the document that you
10:53 25 referenced before or after that conversation?

1 A After.

2 Q So she sent that document to someone who
3 eventually sent it to counsel or she sent it to
4 counsel and counsel gave it to you; is that correct?

10:53 5 A Correct.

6 Q So you had one fairly short conversation
7 with Reba Gong before preparing this report.

8 Did you have conversations with anyone else
9 before you prepared this report concerning the
10:53 10 matters that you ultimately opined on?

11 A Besides the attorneys?

12 Q Besides the attorneys, for now.

13 A Art was on the conversation with Reba.

14 Q So when you talked with Ms. Gong, Art Cohen
10:54 15 was also on the --

16 Was this a telephone conversation?

17 A Yes.

18 Q So you had a fairly short call with
19 Reba Gong and Art Cohen before you prepared your
10:54 20 report in this case, correct?

21 A Correct.

22 Q And you think that conversation was less
23 than a half an hour?

24 A Yes.

10:54 25 Q And were Ms. Gong and Mr. Cohen on the phone

1 Q And you mentioned that you reviewed this
2 document again in preparation for this deposition,
3 correct?

4 A I looked up one particular fact, but
11:00 5 I didn't review the whole thing again, no.

6 Q What was that particular fact?

7 A It was the liabilities assumed from the --
8 not the liabilities assumed.

9 It was the proceeds from litigation.

11:00 10 MR. STEWART: Can we mark this as Exhibit 4?

11 THE REPORTER: Yes.

12 (Defendants' Exhibit 4 was marked
13 for identification and is attached
14 hereto.)

11:00 15 BY MR. STEWART:

16 Q Item 2 under "Information Considered" says,
17 "First Amended Complaint," correct?

18 A Correct.

19 Q And is the document that I've handed you
11:00 20 which has been marked as Exhibit 4 the first amended
21 complaint referred to?

22 A Yes.

23 Q Did you read the entire complaint?

24 A Yes.

11:00 25 Q If you look, there's an exhibit attached to

1 that complaint -- strike that.

2 Is there an exhibit attached to that
3 complaint?

4 A Exhibit A.

11:00 5 Q And that is a warrant to purchase shares,
6 correct?

7 A Yes.

8 Q And did you review that document in
9 preparation for your work on this case?

11:01 10 A Yes.

11 Q Did you read any other pleadings in this
12 case other than this amended complaint?

13 A No.

14 Q I'll represent to you that in response to
11:01 15 this amended complaint, the defendants filed a motion
16 to dismiss pursuant to Rules 9(b) and 12(b)(6) of the
17 Federal Rules of Civil Procedure.

18 Did you review that motion?

19 A No.

11:01 20 Q Did you review the Court's order on that
21 motion?

22 A No.

23 Q Are you aware that certain claims set forth
24 in that complaint have been dismissed?

11:01 25 A Yes.

1 Q How did you become aware of that?

2 A The -- our counsel told me.

3 Q Was that relevant to your analysis at all?

4 A No.

11:01 5 Q Did you review the answer filed by
6 defendants denying most of the allegations set forth
7 in this complaint?

8 A No.

9 Q To be clear, you reviewed plaintiff's
11:02 10 allegations without reviewing defendants' responses
11 to those allegations before you rendered an opinion
12 in this matter; is that correct?

13 A Correct.

14 MR. STEWART: Can we mark this as Exhibit 5?

11:02 15 THE REPORTER: Yes.

16 (Defendants' Exhibit 5 was marked
17 for identification and is attached
18 hereto.)

19 BY MR. STEWART:

11:02 20 Q Number 3 under your "Items Considered" on
21 page 6 of your report refers to a "Patent Portfolio
22 Financial Model for Aerielle as of December 23, 2009
23 by ipCapital Group," correct?

24 A Yes.

11:02 25 Q And is the document I've just handed you

1 which has been marked as Exhibit 5 that financial
2 model?

3 A Yes.

4 Q And you reviewed this entire document
11:03 5 preparing your report?

6 A Yes.

7 Q Did you review any documents that were used
8 to prepare this document that's been marked as
9 Exhibit 5?

11:03 10 A No. I requested the backup behind it, but
11 it was never received.

12 Q Did you talk to any of the authors of this
13 report?

14 A No.

11:03 15 Q Do you know who wrote this report?

16 A ipCapital Group.

17 Q Do you know which individuals wrote this
18 report at ipCapital Group?

19 A No.

11:03 20 Q Did you review any other documents prepared
21 by ipCapital Group?

22 A No.

23 Q We'll discuss this document a little more
24 when we get into the substance of your opinions.

11:04 25 I just want to be clear, this is the only

1 document created by ipCapital Group that you
2 reviewed, correct?

3 A Correct.

4 Q The next item listed on page 6 of 7 of your
11:04 5 report is a "Letter from Great American Life
6 Insurance Company dated October 31, 2011."

7 (Defendants' Exhibit 6 was marked
8 for identification and is attached
9 hereto.)

11:04 10 BY MR. STEWART:

11 Q I've handed you what's been marked as
12 Exhibit 6.

13 Is this the letter referred to in your
14 report?

11:04 15 A Yes.

16 (Defendants' Exhibit 7 was marked
17 for identification and is attached
18 hereto.)

19 BY MR. STEWART:

11:04 20 Q Number 5 under your list of "Items
21 Considered" on page 6 of your report is an
22 "Assignment and Transfer Statement as to
23 Intellectual Property dated August 2, 2011."

24 Is the document I handed you as Exhibit 7
25 that document?

1 Q Who would have sent you those calculations?

2 A Again, the attorneys.

3 Q And sitting here today, you think you might
4 have received them, but you just don't recall for
11:15 5 sure?

6 A I don't recall, but I didn't use that data
7 in my analysis. I just used that the judgment was
8 entered.

9 Q If that data was sent to you, it would be in
11:15 10 the documents that you brought today?

11 A Yes.

12 Q Number 7 under your list of "Items
13 Considered" on page 6 of 7 of your report refers to a
14 deposition of Donald Yu; is that correct?

11:15 15 A Yes.

16 Q And am I correct that you did not review
17 that entire deposition? Is that correct?

18 A Correct.

19 MR. STEWART: Can we please mark that as
11:16 20 Exhibit 9?

21 THE REPORTER: Yes.

22 (Defendants' Exhibit 9 was marked
23 for identification and is attached
24 hereto.)

11:16 25 BY MR. STEWART:

1 Q Ms. Ford, I've handed you what's been marked
2 as Exhibit 9.

3 Is this the portion of the deposition
4 transcript of Mr. Yu's deposition that you reviewed
11:16 5 in preparation for your work on this case?

6 A Yes.

7 Q And just to be clear, this was a deposition
8 of Mr. Yu in another case, not this case; is that
9 correct?

11:16 10 A That's my understanding.

11 Q And it's a case that involved a company
12 called Belkin International, correct?

13 A Yes.

14 Q I'll represent to you that Mr. Yu was also
11:16 15 deposed in this case.

16 Did you review the transcript of that
17 deposition?

18 A No.

19 Q I'll represent to you that Arthur Cohen
11:16 20 testified as a corporate representative of the
21 plaintiff in a deposition in this case.

22 Did you review the transcript of that
23 deposition?

24 A No.

11:16 25 Q I'll represent to you that Reba Gong was

1 deposed in this case.

2 Did you review a transcript of that
3 deposition?

4 A No, although --

11:17 5 Let me back up. I recall reading a
6 transcript of a depo in this case that talked about
7 her deposition. Maybe it came after my report.

8 Do you know the dates of those depositions?

9 Q I do.

11:17 10 A Were they after mine or before mine?

11 Q They would have been before your report,
12 although I'm not testifying.

13 A I don't recall. I don't recall.

14 Q So focusing on the period of time, you're
11:17 15 drawing the distinction, understandably, between the
16 period of time before and after you prepared your
17 report.

18 After you prepared your report, did you
19 review Mr. Yu's deposition in this case?

11:17 20 A I don't believe so.

21 Q Did you review Mr. Cohen's deposition in
22 this case?

23 A I don't believe so.

24 Q Did you review Ms. Gong's deposition in this
11:17 25 case?

1 reviewed?

2 A Yes.

3 Q Thank you.

4 And I know I've belabored this point, but
11:22 5 these are the only documents referred to in your
6 report, correct, that we've looked at today?

7 A Yes.

8 Q I think you've testified that you also
9 looked at some document requests, a communication
11:23 10 from Ms. Gong.

11 Was there anything else that you reviewed in
12 preparing your report that we haven't talked about
13 today?

14 A Not that I recall.

11:23 15 Q This case, I wasn't sure you know, involves
16 in part an intellectual property portfolio, correct?

17 A Yes.

18 Q And that portfolio includes patents,
19 correct?

11:23 20 A Yes.

21 Q That's your understanding?

22 A Yes.

23 Q Did you read or review any of the patents
24 themselves before preparing your report?

11:23 25 A I reviewed the listing that's included in

1 the asset purchase agreement, but I didn't actually
2 review the patents themselves, the drawings.

3 Q And just so the record's clear, by "asset
4 purchase agreement," you mean the April 10, 2009
11:23 5 asset purchase agreement?

6 A Correct.

7 Q Have you reviewed any of the patents
8 themselves at issue in this case since you prepared
9 your report?

11:23 10 A No.

11 Q We've talked about the documents you
12 reviewed, what you did to prepare your report.
13 I'd like to move on to what I consider the meat and
14 potatoes of the deposition which is the actual
11:24 15 opinions expressed in your report.

16 So for now, let's turn back to Exhibit 1
17 which is the report itself.

18 As we've discussed, your analysis was
19 focused solely on the April 10, 2009 transaction,
11:24 20 correct?

21 A Correct.

22 Q And any analysis or work that you did in
23 this report is concerning the amount of assets as of
24 that date, correct?

11:24 25 A Correct.

1 Q And is it your understanding that the effect
2 of the April 10, 2009 asset purchase agreement was to
3 transfer all or substantially all of the plaintiff's
4 assets to Aerielle, LLC?

11:25 5 A I'm not -- yes.

6 Q And is it your understanding that in
7 exchange, Aerielle, LLC assumed all of plaintiff's
8 liabilities?

9 A No, they did not.

11:25 10 Q What do you mean by that?

11 A They assumed very specific liabilities, and
12 it's listed in the asset purchase agreement. They
13 assumed the 8 million in debt and I believe some of
14 the accounts payable, but the asset purchase
11:25 15 agreement says they're purchasing all the assets that
16 Aerielle could have and then these specific
17 liabilities.

18 Q Are you aware of any specific liabilities
19 that were not assumed by Aerielle, LLC?

11:25 20 A That's a very good question.

21 Q I usually get one.

22 A I didn't list what would not be assumed.
23 I didn't consider that. I just made -- I created a
24 document that says these are the liabilities assumed.
11:25 25 I didn't really examine what was not included.

1 A For Aerielle to purchase them, they had to
2 be listed because the asset purchase agreement says
3 we purchased all assets. And only these liabilities
4 were specifically listed, so if it wasn't listed,
11:39 5 they wouldn't be assuming them.

6 Q So to you --

7 A And I believe they -- listed on the assets
8 they purchased would be the agreements with these
9 manufacturers.

11:39 10 Q So just so I'm understanding, there were
11 certain agreements with manufacturers that were part
12 of the transfer of assets in this case?

13 A Yes. There was a lot of intellectual
14 property that was transferred, excluding the patents,
11:39 15 besides the patents.

16 Q And there were certain liabilities under
17 those agreements that appeared as liabilities in the
18 asset purchase agreement, and that's what we're
19 talking about now?

11:39 20 A They were listed as liabilities.

21 Q Did you ask Mr. Cohen why he signed a
22 document that listed these as liabilities?

23 A No.

24 Q Are you familiar with GAAP, G-A-A-P?

11:40 25 A Yes.

1 Q What is it?

2 A Generally Accepted Accounting Principles.

3 Q What are they?

4 A Rules and regulations accountants follow to
11:40 5 provide financial statements in accordance with GAAP.

6 Q Are those the standards that govern your
7 profession?

8 A I don't produce financial statements. It
9 doesn't rule forensic accounting. It's over
11:40 10 financial statements.

11 Q Were Aerielle, LLC's balance sheets prepared
12 in accordance with GAAP?

13 A I don't know specifically. I would assume
14 so because that's how you're supposed to produce
11:40 15 them.

16 Q Do you know if the financial statements for
17 Aerielle, LLC and Aerielle, Inc. were audited?

18 A If they were audited, they're according to
19 GAAP. I don't know if they were audited, reviewed,
11:40 20 or compiled.

21 Q So you don't know what standards were used
22 to create the balance sheets of Aerielle, LLC and
23 Aerielle, Inc., correct?

24 A Correct.

11:41 25 Q You don't know what standards were used to

1 create the balance sheets that you used in creating
2 your report, correct?

3 A Correct.

4 Q Do you know what assumptions were made to
11:41 5 create the balance sheets that you relied on in
6 preparing your report?

7 A I do not know what assumptions were made.

8 Q Did you do any independent review of the
9 documents and materials available as of April 30,
11:41 10 2009 to determine if the balance sheets complied with
11 GAAP?

12 A I did not.

13 Q Did you do any review of the balance sheets
14 of Aerielle, Inc. and Aerielle, LLC to determine if
11:41 15 they complied with some other standard other than
16 GAAP?

17 A I did not.

18 Q Are you aware sitting here today of any
19 other standards that could have applied?

11:42 20 A No.

21 Q And I know I started off by saying we were
22 going to talk about the liabilities listed in your
23 report.

24 Would that discussion of GAAP also apply to
11:42 25 the listing of assets on the balance sheets of

1 Aerielle, Inc. and Aerielle, LLC?

2 A Either their balance sheets are conforming
3 with GAAP or they're not.

4 Q And sitting here today, you don't know
11:42 5 whether they comply with GAAP, correct?

6 A Correct.

7 Q Okay. Can you turn to page 3 of your
8 report? And I'd like to talk just now about the
9 assets, your analysis of the amount of assets that
11:43 10 were transferred pursuant to the April 10, 2009 asset
11 purchase agreement. And we've talked about this
12 before.

13 On the bottom of page 3 of your report and
14 flowing over to page 4, you mentioned that you used
11:43 15 Aerielle's April 30, 2009 balance sheet to determine
16 some of the assets that were transferred on April 10,
17 2009, correct?

18 A Correct.

19 Q And just so I'm sure that I understand, that
11:43 20 was because you couldn't find any balance sheets as
21 of April 10, 2009, correct?

22 A Correct.

23 Q So you used the April 30, 2009 balance
24 sheets as a reasonable approximation of the April 10,
11:44 25 2009 assets that were transferred?

1 Q Ms. Ford, I've handed you what's been marked
2 as Exhibit 11. I believe before we went off the
3 record, you referenced a workpaper where you listed
4 the lawsuits that you incorporated into your report
12:04 5 as an asset number.

6 Is this the workpaper that you were
7 referring to?

8 A Yes.

9 Q So to be clear, this is a list of lawsuits
12:04 10 and specifically settlements that you deemed could be
11 collected in the future by -- or would likely be
12 collected in the future by Aerielle, LLC; is that
13 fair?

14 A It is the listing of the litigation claims
12:04 15 that's in the asset purchase agreement for items that
16 I thought at the time were deemed collectable and had
17 a reasonable value.


18 Q It was, again, your understanding and
19 assumption that none of these settlement agreements
12:04 20 had actually been collected on?

21 A Correct.

22 Q I'd like to look at the first lawsuit listed
23 here.

24 A Yep.

12:04 25



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4

A Yes.

12:05 5

6

Q So you were assuming that a settlement agreement that was signed on August 10, 2007 hadn't been paid as of April 10, 2009?

8

A Yes.

9

Q What was the basis of that understanding?

12:05 10

11

A That was my understanding.

12

Q What was the basis of that understanding?

13

A I was told none of it had been collected.

14

Q Who told you that?

15

A Counsel.

12:05 16

17

Q Did you do any other analysis to determine whether that Monster settlement had been collected?

18

A When you read the description in the asset purchase agreement --

19

12:05 20

21

Q And again, you're looking on Schedule 3.11 of the April 10, 2009 asset purchase agreement that's been marked as Exhibit 3 in this deposition?

22

A Yes.

23

Q Go ahead.

24

12:05 25

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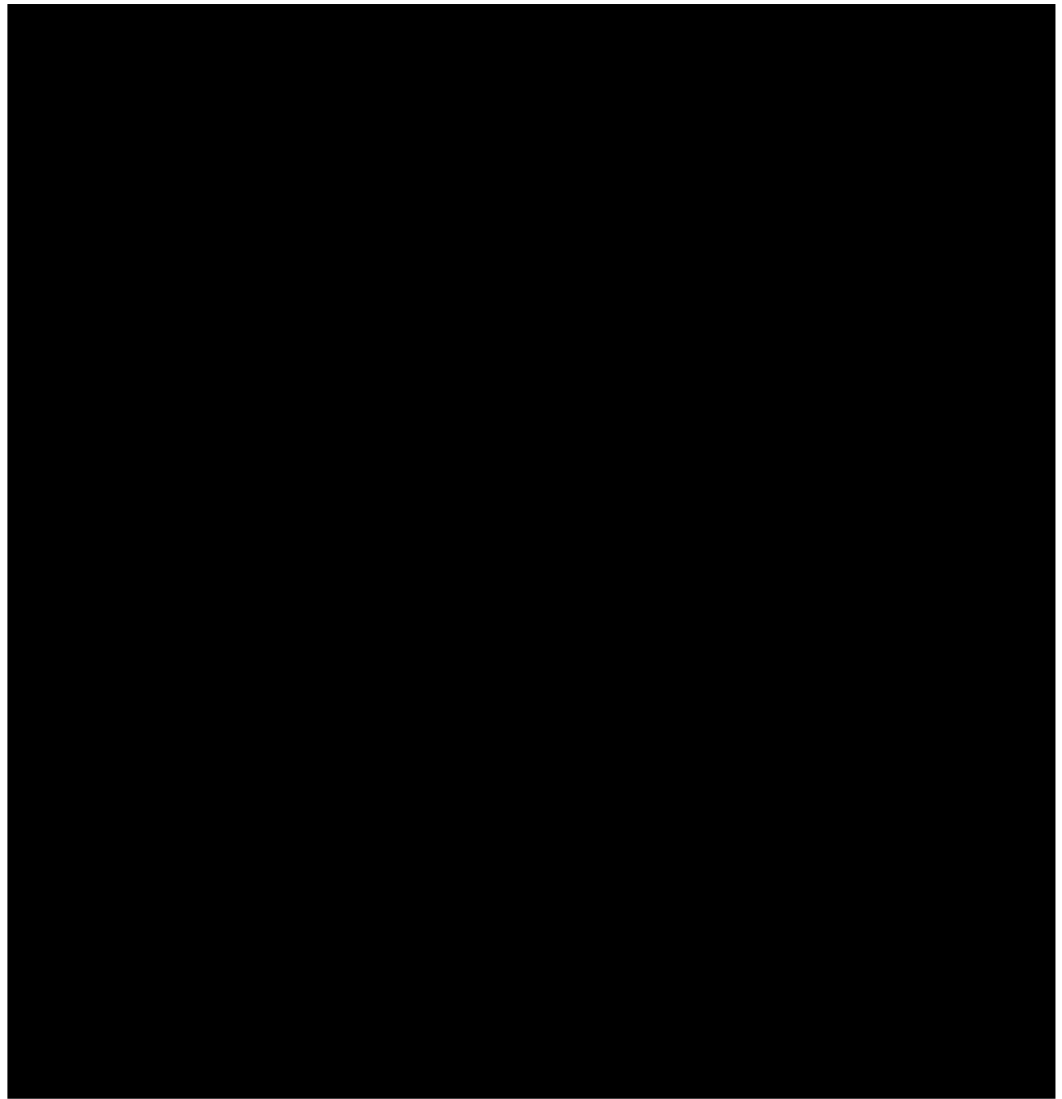
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(Whereupon the following portion
of the transcript was deemed highly
confidential and bound separately.)

1 assets that were transferred on April 10, 2009,
2 correct?

3 A Yes.

4 Q But you're using a report that's dated
12:17 5 December 23, 2009?

6 A Yes. It was the only information I had.

7 Q And you're not --

8 A It was the best information I had.

9 Q You're not opining on the value of any of
12:17 10 the intellectual property as of December 23, 2009,
11 correct?

12 A Correct.

13 Q That was the only information that you used
14 to estimate the amount of assets that were
12:17 15 transferred on April 10, 2009, correct?

16 A Yes.

17 Q In the course of your work on this case, did
18 you analyze the difference in the economy between
19 April 2009 and December 2009?

12:18 20 A No.

21 Q Did you analyze the equity markets in
22 April 2009 and December 2009?

23 A No.

24 Q Is it your opinion that the value of the
12:18 25 IP assets was unchanged from April 10, 2009 to

1 December 23, 2009?

2 A My opinion is this was a reasonable estimate
3 based on the information available.

4 Q Is it your opinion that the value of the
12:18 5 assets did not change from April 10, 2009 to
6 December 23, 2009?

7 A I have seen nothing that leads me to believe
8 they have changed.

9 Q Did you analyze the relative strengths of
12:18 10 Aerielle, Inc. in April 2009 versus Aerielle, LLC in
11 December 2009?

12 A The value of the patents is not the same
13 thing as the value of the company, so I did not look
14 at the value of the company.

12:18 15 Q Is it your opinion sitting here today that
16 the value of the patents has no connection at all to
17 the value of the company?

18 A Yeah.

19 Again, I'm not an expert in valuing patents.

12:19 20 Q You're not an expert in valuing patents?

21 A No.

22 Q Did you consider any changes in the MP3
23 market in 2009?

24 A No.

12:19 25 Q Did you analyze sales trends between

1 April 2009 and December 2009?

2 A No.

3 Q Did you consider whether Aerielle, Inc. was
4 in default of any of its obligations to
12:19 5 Great American Life Insurance Company in April 2009?

6 A No.

7 Q Did you consider whether Aerielle, Inc. was
8 in danger of being in default of its obligations to
9 Great American Life Insurance Company in April 2009?

12:19 10 A No.

11 Q Did you consider whether in December 2009
12 the owner of the patents had access to more capital
13 than the owner of the patents did in April 2009?

14 A No.

12:19 15 Q Did you do any research concerning iPod
16 sales trends at all in connection with this report?

17 A No.

18 Q And again, Exhibit 5 is the ipCapital
19 presentation that you reviewed, correct?

12:20 20 A Correct.

21 Q In addition to the asset purchase agreement?

22 A Correct.

23 Q And I think we covered this, but you had no
24 discussions with the person or persons who prepared
12:20 25 this report, correct?

1 A Correct.

2 Q And you don't even know sitting here today
3 who it was that wrote this report?

4 A Correct.

12:20 5 Q Do you have any opinion as to the
6 qualifications of the people who wrote this report?

7 A No.

8 Q Do you know what assumptions and
9 methodologies were used to create this report?

12:20 10 A Only what is listed in that report.

11 Q Did you make any effort to recreate
12 ipCapital's work?

13 A No.

14 Q Did you review any of the backup data that
12:20 15 ipCapital used to create this report?

16 A No. I requested the information behind it,
17 but it wasn't received.

18 Q And you asked for that from counsel for
19 plaintiff?

12:20 20 A Yes.

21 Q Did you do any analysis to determine the
22 reasonableness of this report?

23 A I read it. I reviewed their assumptions.
24 It appears reasonable, and it seemed that that was
12:21 25 the information that the parties to the asset

1 purchase agreement believed and supported at the
2 time, being April 10, 2009.

3 Q You believe that the parties -- strike that.

4 Is it your understanding that all of the
12:21 5 parties to the asset purchase agreement in April 10,
6 2009 assigned a value to the patents that's
7 consistent with ipCapital's financial model prepared
8 on December 23, 2009?

9 A I can't -- I don't know what all of the
12:21 10 parties were thinking at that particular moment, but
11 based on the information provided and the progress of
12 data, meaning that GALIC invested more money, that
13 Aerielle hired ipCapital to create that valuation,
14 that Aerielle relied on that valuation in future
12:22 15 things, it seemed like it was relied on by the
16 companies.

17 Q They could not have relied on this report on
18 April 10, 2009, correct?

19 A Correct.

12:22 20 Q Did you review any litigation cases for
21 ipCapital as offered testimony concerning the value
22 of intellectual property?

23 A No.

24 Q Did you review any testimony in any
12:22 25 proceeding from any current or former ipCapital

1 Q You actually assigned an amount higher than
2 10.2 million to the intellectual property, correct?

3 A Yes. I used the \$12 million figure because
4 this valuation was just for patents. The asset
12:26 5 purchase agreement lists a plethora of intellectual
6 property that was included. So I felt that would be
7 a reasonable estimate of all the intellectual
8 property.

9 Q Is there any reference in this report to
12:26 10 trademarks?

11 A In the ipCapital's report? No. It's just
12 for patents.

13 Q So you were using a report that doesn't
14 reference trademarks to value a patent portfolio that
12:27 15 includes trademarks?

16 A Right, and for a few other points listed in
17 my report.

18 Q Understood.

19 A That was one of the factors, yes.

12:27 20 Q We'll go back to your decision to select the
21 aggressive rather than the conservative, reasonable
22 assumption.

23 Focusing on page 4, the last bullet point
24 there says, "All assumptions should be confirmed."

12:27 25 Did I read that correctly?

1 A Yes.

2 Q What assumptions is that referring to?

3 A I would assume the "Assumptions and Notes"
4 and any of the assumptions that go into the financial
12:27 5 model. Unfortunately, I don't have the details
6 behind it to tell you what assumptions went into
7 these models.

8 Q So you made no effort to confirm the
9 assumptions?

12:27 10 A I made the effort. The information was not
11 provided.

12 Q In the end, you were unable to confirm the
13 assumptions?

14 A Correct.

12:28 15 Q Can you turn to page 12 of this
16 presentation? This page of the presentation refers
17 to "Assumptions, IP Monetization Values."

18 Did I read that correctly?

19 A Yes.

12:28 20 Q If you look at the last bullet point here,
21 there's a reference to the 25 percent rule.

22 A Yes.

23 Q Do you know what the 25 percent rule is?

24 A Yes.

12:28 25 Q What is it?

1 A It's a rule of thumb stating that when
2 you're valuing a patent, certain percentage would be
3 a normal royalty rate based on the net income of
4 that.

12:28 5 Does that explain it? I'm sure you already
6 know what it means.

7 Q Did you have an understanding of what the
8 25 percent rule was when you prepared your report?

9 A Yes.

12:28 10 Q Had you used the 25 percent rule in any
11 other matters?

12 A No.

13 Q How did you learn about the -- strike that.
14 Did you do research concerning the

12:28 15 25 percent rule?

16 A No. For this case, I did not.

17 Q How did you know what the 25 percent rule
18 was?

19 A Previous cases.

12:29 20 Q So you had worked on previous cases
21 involving the 25 percent rule?

22 A It applies to royalties to patents, so I've
23 done some analysis on royalties. That's one of the
24 ways that they ballpark a normal royalty figure.

12:29 25 Q Do you know whether courts apply the

1 assets that were transferred on April 10, 2009,
2 correct?

3 A Yes.

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12:17 5 December 23, 2009?

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21 involving the 25 percent rule?

22 A It applies to royalties to patents, so I've
23 done some analysis on royalties. That's one of the
24 ways that they ballpark a normal royalty figure.

12:29 25 Q Do you know whether courts apply the

1 THE WITNESS: I was thinking if you're trying to
2 narrow this down to the only thing that changed, that
3 nothing changed besides they did a valuation, they
4 might try to do something creative, but no.

12:43 5 BY MR. STEWART:

6 Q Okay. In the end, you assigned a value to
7 the IP of \$12,371,017, correct?

8 A Yes.

9 Q And you assigned a value to all of the
12:43 10 assets that were transferred on April 10, 2009 of
11 \$16,748,854, correct?

12 A Right.

13 Q So the number you came up with, the purchase
14 assets less assumed liabilities, is 7,614,971,
12:44 15 correct?

16 A Yes.

17 Q Shouldn't that be the assets minus the
18 liabilities?

19 A Are you telling me I did my math wrong?

12:44 20 Q I think so. I want to make sure I'm not
21 missing something.

22 Well, do you want to use this calculator to
23 confirm it?

24 I don't think it's a huge difference, but
12:45 25 when I do it, I'm missing about \$50. I just want to

1 make sure I'm not missing something, I'm looking at
2 the right numbers.

3 A That would surprise me if there was a math
4 error.

12:45 5 Nope. I get the same number, 16 minus the 9
6 on Exhibit 1. Maybe I typed it wrong in the report.
7 It's possible that I input it into the report wrong.

8 Oh, I did. Look, Exhibit 1 is 883. The
9 right number is 883.

12:45 10 Q So this is a typo in the report, you just
11 put a 3 where there should be an 8?

12 A Yes.

13 Q Thank you.

14 A But the Exhibit 1 is correct.

12:45 15 MR. STEWART: That probably wasn't clear for the
16 record. I was trying to do her math and -- well,
17 strike that.

18 Q Just so your testimony is clear, the correct
19 numbers are what is contained in Exhibits 1 and 2,
12:46 20 correct?

21 A Yes.

22 Q Thank you.

23 Let's mark this as Exhibit 13.

24 (Defendants' Exhibit 13 was marked
12:46 25 for identification and is attached

1 hereto.)

2 BY MR. STEWART:

3 Q Ms. Ford, I've handed you what's been marked
4 as Exhibit 13.

12:46 5 Is this the invoice that you prepared that
6 reflects the work you did in this case, at least
7 through October 16, 2015?

8 A Yes.

9 Q Does this actually reflect the compensation
12:47 10 that you received or expect to receive?

11 A Yes.

12 Q And does this reflect all the time that you
13 worked on this report prior to October 16, 2015?

14 A Yes.

12:47 15 Q And I know we talked briefly about some work
16 you had done since October 16, 2015 to prepare for
17 this deposition.

18 Have you created an invoice that reflects
19 that work yet?

12:47 20 A No.

21 MR. STEWART: Let's go off the record.

22 (Off the record.)

23 MR. STEWART: I have no more questions. Thank
24 you very much for your time. That's all I have.

25 /

EXHIBIT C

[The following text is a dense, continuous block of illegible characters and symbols, likely representing a corrupted or redacted document. It contains no discernible words or structure.]

EXHIBIT D

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

AJZN, INC. f/k/a AERIELLE, INC.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 13-149-GMS
)	
DONALD YU, et al.)	
)	
Defendants.)	

VERIFICATION

STATE OF OHIO)	
)	SS
HAMILTON COUNTY)	

Joseph Stelzer, being first duly sworn on oath, deposes and states that he is the authorized representative of the following defendants in the above-entitled action; that he has read and reviewed the following answers to discovery requests propounded by plaintiff and knows the contents thereof:

(1) Defendant **Aerielle, LLC**'s Answer to Plaintiff AJZN Inc. F/K/A Aerielle, Inc.'s First Set of Interrogatories and Second Set of Requests for Production of Documents and Things (dated June 7, 2015); and

(2) Defendant **Aerielle IP Holdings, LLC**'s Answer to Plaintiff AJZN Inc. F/K/A Aerielle, Inc.'s First Set of Interrogatories and Second Set of Requests for Production of Documents and Things (dated July 7, 2015);

With respect to the interrogatory portion of each of the above responses, the answers were prepared with the assistance and advice of counsel and the assistance of employees and representatives of each entity; the answers set forth in the responses, subject to inadvertent or undiscovered errors, are based on, and therefore necessarily limited by, the records and

information still in existence, presently recollected and thus far discovered in the course of the preparation of these answers (and consequently, the defendants reserve the right to make any changes in the responses if it appears at any time that omissions or errors have been made therein or that more accurate information is available). Subject to the limitations set forth herein, said answers are true to the best of Mr. Stelzer's knowledge, information and belief.



Joseph Stelzer
Authorized Representative of Aerielle, LLC
and Aerielle IP Holdings, LLC

Subscribed and sworn to before me this

20th day of August, 2015



Notary Public, State of Ohio

My Commission 9/26/2020

6284096.2



Karen L. Frommeyer
Notary Public, State of Ohio
My Commission Expires 09-26-2020

EXHIBIT E

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

AJZN, INC. f/k/a AERIELLE, INC.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 13-149-GMS
)	
DONALD YU, et al.)	
)	
Defendants.)	

VERIFICATION

STATE OF)	
)	SS
COUNTY OF)	

Donald Yu, being first duly sworn on oath, deposes and states that he is the authorized representative of **Aerielle Acquisitions Corporation** and **Aerielle Technologies, Inc.**; that he has read and reviewed Aerielle Acquisition Corporation's Answer to Plaintiff AJZN Inc. F/K/A Aerielle, Inc.'s First Set of Interrogatories and Second Set of Requests for Production of Documents and Things (dated August 1, 2015) and Aerielle Technologies, Inc.'s Answer to Plaintiff AJZN Inc. F/K/A Aerielle, Inc.'s First Set of Interrogatories and Second Set of Requests for Production of Documents and Things (dated July 7, 2015). With respect to the interrogatory portion of those responses (and dating from his employment in or about 2008), the answers were prepared with the assistance and advice of counsel and the assistance of employees and representatives; the answers set forth in the responses, subject to inadvertent or undiscovered errors, are based on, and therefore necessarily limited by, the records and information still in existence, presently recollected and thus far discovered in the course of the preparation of these answers (and consequently, the defendants reserve the right to make any changes in the responses if it appears at any time that omissions or errors have been made therein or that more

accurate information is available). Subject to the limitations set forth herein, said answers are true to the best of Mr. Yu's knowledge, information and belief.

Donald Yu 09-08-15
Authorized Representative of Aerielle
Acquisitions Corporation and Aerielle
Technologies, Inc.

Subscribed and sworn to before me this

____ day of _____, 2015

Notary Public, State of _____

My Commission _____

6286327

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Santa Clara

Subscribed and sworn to (or affirmed) before me
on this 8th day of Sept, 2015.

by _____
Date Month Year

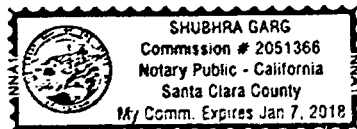
(1) Donald Yu

(and (2) _____)

Name(s) of Signer(s)

proved to me on the basis of satisfactory evidence
to be the person(s) who appeared before me.

Signature _____
Signature of Notary Public



CERTIFICATE OF SERVICE

I, Aimee M. Czachorowski, hereby certify that on this 11th day of February, 2016, I caused a true and correct copy of the foregoing **Second Declaration of Benjamin G. Stewart** to be served on the below counsel of record via email and U.S. First-Class Mail as follows:

Blake A. Bennett, Esquire
Cooch and Taylor, P.A.
The Brandywine Building
1000 West Street, 10th Floor
Wilmington, DE 19899
bbennett@coochtaylor.com

Lawrence J. Hilton, Esquire
Kathleen A. Donahue, Esquire
O'Neil LLP
19900 MacArthur Blvd
Suite 1050
Irvine, CA 92612
lhilton@oneil-llp.com
kdonahue@oneil-llp.com

/s/ Aimee M. Czachorowski
Aimee M. Czachorowski (Bar No. 4670)